

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 259 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

THE ANIL STARCH PRODUCTS LTD.

Appearance:

MR MANISH R BHATT for Petitioner
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 01/12/98

ORAL JUDGEMENT

1. Heard learned counsel for the applicant as well as learned counsel for the respondent assessee. The revenue having been unsuccessful with the Tribunal in its application under Section 256(1) for referring the following two questions of law, said to be arising out of

Tribunal's order dated 3.10.1997 in ITA No. 2551/Ahd/92 relating to assessment year 1988-89, the revenue has filed this application under Section 256(2) confining its prayer for requiring the Tribunal to refer only question No.1 for the opinion of this Court.

"1. Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeals) deleting the addition of Rs.1,21,429/- made on account of premium payable on redemption of debentures, when the Assessing Officer was of the opinion that the entire amount of premium accrued in the year in which the debentures were redeemed and did not form part of the expenditure for the current year?"

2. Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeals) directing the Assessing Officer not to include the amount of HRA, reimbursement of medical expenses, premium paid on personal accident from the salary of the employees for the purpose of working out disallowance under Section 40(c) and 40A(5) of the Act?"

2. As will be presently seen, though the question is question of law, as the issue has already been decided by the Supreme Court, the Tribunal cannot be directed to refer the said question. The assessee company had issued debentures for an amount totalling to Rs.1,70,000/-. The debentures are payable at the premium of 5% at the end of maturity. As the debentures were repayable at the end of 7th year, with premium, one seventh of the premium liable to be paid by the company at the time of redemption of debentures was claimed as a deduction from its gross total income while computing taxable income for the assessment year in question. The Income Tax Officer disallowed the expenditure by holding that the liability to pay entire premium would accrue only at the time of redemption of such debentures and no deduction on that account can be allowed in the year under consideration.

3. On appeal, C.I.T. (Appeals) allowed the deduction claimed by the assessee which allowance has been affirmed by the Tribunal on further appeal. The question precisely is whether any amount payable in excess of deposit receipts by the assessee on issue of debenture at the time of repayment is the liability accrues, arises and becomes expenditure on the business

only in the year in which debentures are repaid or redeemed or the liability accrues earlier thereto.

4. The question arose for consideration before Their Lordships in Supreme Court in Madras Industrial Investment Corporation Limited v. Commissioner of Income-tax 225 ITR 802. It was a case where the appellant company had issued debentures in December 1966, at a discount. The total discount on the issue of Rs.1.5 crores amounted to Rs.3.00 lakhs. For the assessment year 1968-69, the company wrote off Rs.12,500 out of the total discount of Rs.3 lakhs being the proportionate amount of discount for the period of six months ending with June 30, 1967, taking into account the period of 12 years which was the period of redemption and dividing the amount of Rs.3 lakhs over the period of 12 years. The Income-tax Officer disallowed the claim but the appellate Assistant Commissioner allowed the deduction of Rs.12,500. The Tribunal held that the entire expenditure of Rs.3,00,000 was allowable as expenditure for the year of issue incurred for the purpose of business. On a reference, the High Court noted that out of the total discount of Rs.3,00,000 an amount of Rs.12,500 had been allowed which the Department had not challenged. Hence, the High Court was concerned only with the balance amount of Rs.2,87,500 which the High Court held, could not be considered as expenditure. On appeal to the Supreme Court, the Supreme Court held that the liability to pay the discounted amount over and above the amount received for the debentures was a liability incurred by the company for the purposes of business in order to generate funds for its business activities. It was therefore revenue expenditure.

5. Thus, according to the law laid down by the Supreme Court, where the company undertakes to pay more amount than what it has borrowed, and liability to pay the excess amount undertaken to be paid by the company to fulfil its need for borrowed money is an allowable expenditure under Section 37 of the Income Tax Act.

6. About spreading over of the expenditure incurred for the borrowing of the sum through debenture, the apex court accepted the principle of spreading over the claim over the period the life of debenture when it said:

"Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to

secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures. The appellant, therefore, had, in its return, correctly claimed a deduction only in respect of the proportionate part of discount of Rs.12,500/- over the relevant accounting period in question."

6. The ratio fully governs the case at hand. It makes little difference whether the company has undertaken to pay larger sum than borrowed on account of issuing debentures on discount or is made redeemable at premium. As the answer to the question of law is concluded by decision of the Supreme Court, and the decision of the Tribunal is in consonance with it, we decline to grant this application.

Application under, Section 256(2) is rejected.

(Rajesh Balia, J)

(A.R. Dave, J)